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**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION**

KYANN FLINT

Plaintiff,

v.

ALOHA POKE FAIRHAVEN, LLC

Defendant.

No.

COMPLAINT

Plaintiff, KYANN FLINT (“Plaintiff”) by and through the undersigned counsel, hereby files this Complaint and sues OLOHA POKE FAIRHAVEN, LLC., for injunctive relief, attorney’s fees and costs pursuant to 42 U.S.C. §12181 *et seq.*, (“Americans with Disabilities Act” or “ADA”) and Chapter 49.60 of the Revised Code of Washington and alleges:

JURISDICTION AND PARTIES

1. This is an action for declaratory and injunctive relief and damages pursuant to Title III

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2 of the Americans with Disabilities Act, 42 U.S.C. §12181 *et seq.*, (hereinafter referred to as the
3 “ADA”) and Chapter 49.60 of the Revised Code of Washington. This Court is vested with original
4 jurisdiction under 28 U.S.C. §§1331 and 1343.
5

6 2. Venue is proper in this Court, the Western District of Washington, pursuant to 28
7 U.S.C. §1391 (B) and Local Rules of the United States District Court for the Western District of
8 Washington.
9

10 3. Plaintiff, KYANN FLINT (hereinafter referred to as “FLINT”) is a resident of the
11 State of Washington and is a qualified individual with a disability under the ADA. FLINT suffers
12 from what constitutes a “qualified disability” under the ADA, Chapter 49.60 of the Revised Code of
13 Washington, and all other applicable Federal statutes and regulations. Plaintiff has substantial
14 limitations to her ability to see (is “legally blind”) and also has a neuromuscular disorder that limits
15 her ability to walk such that she requires a wheelchair for mobility and has limited use of her upper
16 extremities. Prior to instituting the instant action, FLINT visited the Defendant’s premises at issue in
17 this matter, and was denied full, safe and equal access to the subject properties due to their lack of
18 compliance with the ADA. FLINT continues to desire and intends to visit the Defendant’s premises
19 but continues to be denied full, safe and equal access due to the barriers to access that continue to
20 exist.
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24 4. The Defendant, ALOHA POKE FAIRHAVEN LLC, is a limited liability company
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2 registered to do business and, in fact, is conducting business in the State of Washington. Upon
3 information and belief, ALOHA POKE FAIRHAVEN, LLC. (hereinafter referred to as “Aloha”) is
4 the owner, lessee and/or operator of the real property and improvements that are the subject of this
5 action, specifically the Aloha Poke Restaurant located at 1102 Harris Avenue, in Bellingham,
6 Washington (hereinafter referred to as the “Restaurant”).
7

8
9 5. All events giving rise to this lawsuit occurred in the Western District of
10 Washington.

11 **COUNT I - VIOLATION OF THE AMERICANS WITH DISABILITIES ACT**

12 6. On or about July 26, 1990, Congress enacted the Americans with Disabilities Act
13 (“ADA”), 42 U.S.C. §12101 *et seq.* Commercial enterprises were provided one and a half years
14 from enactment of the statute to implement its requirements. The effective date of Title III of the
15 ADA was January 26, 1992. 42 U.S.C. §12181; 20 C.F.R. §36.508 (A).
16

17 7. Pursuant to 42 U.S.C. §12181(7) and 28 C.F.R. §36.104, the Restaurant owned by
18 ALOHA is a place of public accommodation in that it is a restaurant operated by a private entity
19 that provides goods and services to the public.
20

21 8. Defendant has discriminated and continues to discriminate against the Plaintiff,
22 and others who are similarly situated, by denying access to, and full, safe and equal enjoyment of
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2 goods, services, facilities, privileges, advantages and/or accommodations at the Restaurant in
3 derogation of 42 U.S.C §12101 *et seq.*

4
5 9. The Plaintiff has been unable to and continues to be unable to enjoy access to, and
6 the benefits of the services offered at the Restaurant owned by ALOHA. Prior to the filing of
7 this lawsuit, Plaintiff visited the Restaurant at issue in this lawsuit and was denied access to the
8 benefits, accommodations and services of the Defendant's premises and therefore suffered an
9 injury in fact as a result of the barriers to access listed in Paragraph 11, below that she personally
10 encountered. In addition, Plaintiff continues to desire and intends to visit the Restaurant, but
11 continues to be injured in that she is unable to and continues to be discriminated against due to
12 the barriers to access which remain at the Restaurant in violation of the ADA. FLINT has now
13 and continues to have reasonable grounds for believing that she has been and will be
14 discriminated against because of the Defendant's continuing deliberate and knowing violations of
15 the ADA.
16
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18

19 10. Pursuant to the mandates of 42 U.S.C. §12134(a), on July 26, 1991, the
20 Department of Justice, Office of the Attorney General, promulgated Federal Regulations to
21 implement the requirements of the ADA 28 C.F.R. Part 36.
22

23 11. ALOHA is in violation of 42 U.S.C. §12181 *et seq.* and 28 C.F.R. §36.302 *et seq.*,
24 and is discriminating against the Plaintiff as a result of *inter alia*, the following specific
25 violations:
26

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- i. There is no accessible path of travel from the city side walk to the entry due to a 3 inch to 4 inch change in level;
- ii. There is no accessible seating in the interior dining area;
- iii. The corridor to the restroom is too narrow for a wheelchair user;
- iv. There is insufficient maneuvering space at both sides of the restroom door;
- v. The toilet compartment is too narrow and too shallow;
- vi. There are no grab bars in the toilet compartment;

12. There are other current barriers to access and violations of the ADA at the Restaurant owned and operated by ALOHA that were not specifically identified herein as the Plaintiff is not required to engage in a futile gesture pursuant to 28 C.F.R. Part 36, §36.501 and, as such, only once a full inspection is performed by Plaintiff or Plaintiff's representatives can all said violations be identified.

13. To date, the barriers to access and other violations of the ADA still exist and have not been remedied or altered in such a way as to effectuate compliance with the provisions of the ADA.

14. Pursuant to the ADA, 42 U.S.C. §12101 *et seq.* and 28 C.F.R. §36.304, ALOHA was required to make its Restaurant, a place of public accommodation, accessible to persons with disabilities by January 28, 1992. To date, ALOHA has failed to comply with this mandate.

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2 15. Plaintiff has been obligated to retain undersigned counsel for the filing and
3 prosecution of this action. Plaintiff is entitled to have her reasonable attorney's fees, costs and
4 expenses paid by Defendant pursuant to 42 U.S.C. §12205.
5

6 WHEREFORE, the Plaintiff demands judgment against ALOHA, and requests the following
7 injunctive and declaratory relief:
8

9 A. That the Court declare that the property owned and administered by
10 Defendant is violative of the ADA;

11 B. That the Court enter an Order directing Defendant to alter its facilities
12 to make them accessible to and useable by individuals with disabilities
13 to the full extent required by Title III of the ADA;
14

15 C. That the Court enter an Order directing Defendant to evaluate and
16 neutralize its policies and procedures towards persons with disabilities
17 for such reasonable time so as to allow them to undertake and complete
18 corrective procedures;
19

20 D. That the Court award reasonable attorney's fees, costs (including expert
21 fees) and other expenses of suit, to the Plaintiff; and
22

23 E. That the Court award such other and further relief as it deems
24 necessary, just and proper.
25

COUNT II - VIOLATION OF WASHINGTON LAW AGAINST DISCRIMINATION

16. Plaintiff realleges and reavers Paragraphs 1-5 contained herein.

17. Chapter 49.60 of the Revised Code of Washington is known as the "law against discrimination." Section 49.60.010 provides that it is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. Through this section, the legislature found and declared that practices of discrimination against any of its inhabitants because of ... the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person is a matter of state concern and that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.

18. Section 49.60.215 of the Revised Code of Washington makes it an unfair practice for any person or the person's agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by law and applicable to all persons, regardless ofthe presence of any sensory,

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2 mental, or physical disability, or the use of a trained dog guide or service animal by a disabled
3 person.

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5 19. Section 49.60.030 provides that any person deeming himself or herself injured by any
6 act in violation of this chapter (49.60) shall have a civil action in a court of competent jurisdiction to
7 enjoin further violations, or to recover the actual damages sustained by the person, or both, together
8 with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized
9 by this chapter.
10

11 20. Pursuant to Section 9.91.010(d) of the Revised Code of Washington, the
12 establishment owned by ALOHA is a place of public accommodation in that it is a Restaurant which
13 provides goods and services to the public.
14

15 21. ALOHA has discriminated, and continues to discriminate against the Plaintiff, and
16 others who are similarly situated, by denying access to, and full and equal enjoyment of goods,
17 services, facilities, privileges, advantages and/or accommodations at the Restaurant in derogation of
18 the Revised Code of Washington §49.60 *et seq.*
19

20 22. The Plaintiff has been unable to and continues to be unable to enjoy access to, and the
21 benefits of the services offered at the Restaurant. Prior to filing of this lawsuit, Plaintiff visited the
22 Restaurant and was denied access to the benefits, accommodations and services of the Defendant's
23 goods and services and therefore were damaged and suffered an injury in fact. In addition, Plaintiff
24 continues to desire to visit the Restaurant, but continues to be damaged and injured in that she is
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2 unable to and continues to be discriminated against due to the architectural barriers which remain at
3 the Restaurant in violation of the ADA and the Revised Code of Washington §49.60 *et seq.*
4

5 WHEREFORE, the Plaintiff demands judgment against Defendant and requests the following
6 injunctive and declaratory relief:

7 A. That the Court declare that the property owned and administered by
8 Defendant is violative of the Revised Code of Washington §49.60 *et seq.*
9 *seq.*;

10 B. That the Court enter an Order directing Defendant to alter its facility to
11 make it accessible to and useable by individuals with disabilities to the
12 full extent required by the Revised Code of Washington §49.60 *et seq.*;

13 C. That the Court enter an Order directing def to evaluate and neutralize
14 its policies and procedures towards persons with disabilities for such
15 reasonable time so as to allow them to undertake and complete
16 corrective procedures;

17 D. That the Court award damages, reasonable attorney's fees, costs
18 (including expert fees) and other expenses of suit, to the Plaintiff; and

19 E. That the Court award such other and further relief as it deems necessary,
20 just and proper.
21

22 Dated this 19th day of May, 2017.
23

24 Respectfully submitted,

25 By: /s/ Bridget Bourgette Shaw

26 Bridget Bourgette Shaw, Esq.

27 COMPLAINT- 9

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27 COMPLAINT- 10

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